

## **REMARKS/ARGUMENTS**

The Applicant and his counsel thank the Examiner for the March 1, 2006 teleconference. Claims 1-4, 6-22 and 24-25 are pending in this application wherein claims 1, 9 and 17 are in independent format. In this Office Action response, claims 1, 4, 7, 8, 9, 14, 15, 16, 17, 22 and 24 have been amended. Claims 3, 13 and 21 have been cancelled.

Mr. Azzarello has reviewed the Examiner's arguments for the rejection of claims 1-4, 6-22 and 24-25. However, in view of the arguments and claim amendments, he considers these grounds of rejection to be moot.

### **Rejection Under 35 U.S.C. 112**

The Examiner rejected claims 3, 7, 8 and 9 under 35 U.S.C. 112, second paragraph, for insufficient antecedent basis. Claims 3, 7, 8 and 9 along with claims 15, 16, 17 and 24 have been amended to correct the antecedent basis.

### **Rejection Under 35 U.S.C. 102(b)**

The Examiner rejected claim 1 under 35 U.S.C. 102(b) as being allegedly anticipated by *Drogos* (U.S. Patent No. 5,027,973) (hereinafter "the *Drogos* reference").

A prima facie case of anticipation is established when the Examiner provides a single reference that teaches or enables each of the claimed elements (arranged as in the claim) expressly or inherently as interpreted by one of ordinary skill in the art. In the present application, the Applicant submits that a prima facie case of anticipation has not been established. Applicant submits that claim 1 and its respective dependent claims particularly point out and distinctly claim his invention, and that his invention is neither taught nor suggested by the cited reference.

Claim 1 has been amended to include the limitations of claim 3 that the base of the bail has a uniform thickness, and the base and sidewalls of the bail have substantially the same thickness as the container sidewall. As noted by the Examiner, the *Drogos* reference does not teach these limitations, and as such a prima facie case of anticipations is not established.

Dependent claims, by their nature, include all of the limitations of the parent independent claim and any intervening claims from which they depend. Claims 2, 4, 6-8

depend directly or indirectly from independent claim 1, and accordingly, are believed allowable under 35 U.S.C. § 102 (b) over the *Drogos* reference, for at least the same reasons as independent claim 1.

**Rejection Under 35 U.S.C. 103(a)**

The Examiner rejected claim 3 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Schaper* et al. (U.S. Patent No. 6,443,325) (the “*Schaper*” reference). The Examiner rejected claim 4 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Schaper* and in view of *Gall* (U.S. Patent No. 4,357,042) (the “*Gall* reference”). The Examiner rejected claims 6, 7, 9, 10, 11, 17-19 and 25 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of Anderson (U.S. patent No. 4,380,304)(the “*Anderson*” reference). The Examiner rejected claims 12-13 and 20-21 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Anderson* and further in view of *Schaper*. The Examiner rejected claims 14-16, 22 and 24 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Anderson* and further in view of *Schaper* and *Gall*. The Examiner rejected claim 8 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Anderson* in further view of *Letica* (U.S. Patent No. 5,875,913) (the “*Letica* reference”).

Applicant states that, under M.P.E.P. § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation for success. Finally, the prior art reference (or references when combined) must teach or suggest all the claimed limitations. The Applicant further submits that it is improper to combine the references where the references teach away from their combination. (See: M.P.E.P. § 2145 X.D.2).

Claim 3 has been cancelled to incorporate its limitations into claim 1. The Examiner contends that the *Schaper* reference teaches a container and bail wherein the base of the bail has a uniform thickness, and the base and sidewalls of the bail have substantially the same thickness as the container sidewall. The Examiner refers to Fig. 3b. As taught by the *Schaper* reference, element 20 refers to the handle of the cup. (See:

Column 3, lines 20-21). The handle has a substantially U-shaped transverse cross section along the major portion of the length of the handle. (See: Column 3, lines 29-30). The U-shaped cross section tapers to substantially flat webs at the end portion of the handle. The U-shaped cross section progressively increases from each end portion of the handle to the center of the handle. (See: Column 3, lines 32-34). This tapered handle with increasing cross section is shown as the dotted line in Fig. 3b. Fig. 4 shows this tapered handle with increasing cross section as a side view. Clearly, the *Schaper* reference does not teach a bail wherein the thickness of the bail base is uniform throughout the length of the bail, and the base and sidewalls of the bail are of substantially the same thickness as the sidewall of the container body such that the bail has a bend radius that is free from having a living hinge at the connection of the bail and the bosses. The Applicant inquires how a tapered sidewall of the *Schaper* handle can have the same configuration as its associated container that has straight sidewalls.

A comparison of Figs. 2 and 5-7 of the present application and Figs. 3b and 4 of the *Schaper* reference illustrates the differences in configurations. In the present application, the configuration of the base and sidewalls of the bail eliminates any region at the end of the bail of reduced thickness (i.e., a “living hinge” connection). (See: Specification p. 3, lines 5-6; p. 4, lines 9-12; p. 8, lines 10-12 and amended claims 1, 9 and 17). In contrast, the cup of the *Schaper* reference is designed for forming living hinges. (See: Column 3, line 44).

Claims 9 and 17 have also been amended to incorporate the limitations of canceled claims 13 and 21 respectively. Applicants submit the same arguments as applied to amended claim 1. Applicant further submits that claims 1, 9 and 17 recited that the connection between the bail and the bosses remains free from a living hinge. The newly cited *Anderson* reference clearly teaches a living hinge connection. (See: Figs. 9 and 10). Accordingly, it is improper to combine the references where the references teach away from the combination. (See: M.P.E.P. § 2145 X.D.2).

Dependent claims, by their nature, include all of the limitations of the parent independent claims and any intervening claims from which they depend. Claims 4, 6-8, 10-12, 14-16, 18-20, 22 and 24-25 depend directly or indirectly from independent claims

1, 9 and 17, and accordingly, are believed allowable, for at least the same previous reasons as independent claims 1, 9 and 17.

Mr. Azzarello incorporates the previous arguments that the present application is not obvious in view of the *Drogos* reference. The Examiner contends that the *Gall* reference teaches a bail wherein the flattened portion extends horizontally when the container is being carried. The Applicant respectfully submits that the *Gall* reference does not teach a flattened portion. As shown in Figs. 1 and 2, portion 21 is disposed substantially along a curved plane such that the bail includes a "twist" at the center of the bail. (See: Column 5, lines 7-15). One skilled in the art would not be motivated to replace the channel section of the bail as taught by the *Drogos* reference with the curved section as taught by the *Gall* reference since the curved section teaches away from the flat section. As such, the present application is not obvious in view of any combination of the *Drogos* and *Gall* references. For at least this reason, *Schaper* and *Gall* in combination with *Drogos* do not make obvious the claims of the application.

For at least the foregoing reasons, claims 1, 2, 4, 6-8, 9-12, 14-20, 22 and 24-25 are believed to be in condition for allowance. Issuance of a Notice of Allowance with respect to the claims is thus respectfully requested. If for any reason the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to contact the undersigned attorney for the purpose of arranging such an interview.

Respectfully submitted.

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